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**DATE MAILED: 02/03/2005** 

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/620,971	07/16/2003	Richard M. Ehrlich	PANA-01046USH 9692	
23910	7590 02/03/2005		EXAMINER	
FLIESLER MEYER, LLP			FABER, ALAN	
FOUR EMBARCADERO CENTER SUITE 400			ART UNIT	PAPER NUMBER
SAN FRANCISCO, CA 94111			2651	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
	10/620,971	EHRLICH, RICHARD M.				
Office Action Summary	Examiner	Art Unit				
	Alan Faber	2651				
The MAILING DATE of this communication appeariod for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply if NO period for reply is specified above, the maximum statutory period w  - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	i6(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) days ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on 16 Ju	ly 2003.					
	action is non-final.					
	Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims						
4) ☐ Claim(s) 1-22 is/are pending in the application. 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1-22 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or						
Application Papers						
9) The specification is objected to by the Examiner	•					
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
Applicant may not request that any objection to the d	frawing(s) be held in abeyance. See	37 CFR 1.85(a).				
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  1) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:  1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the priori application from the International Bureau * See the attached detailed Office action for a list of	have been received. have been received in Application ity documents have been received (PCT Rule 17.2(a)).	on No ed in this National Stage				
Attachment(s)						
I) ☑ Notice of References Cited (PTO-892) 2) ☑ Notice of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summary Paper No(s)/Mail Da	(PTO-413) ite.				
Paper No(s)/Mail Date 7/16/03.		atent Application (PTO-152)				

Application/Control Number: 10/620,971 Page 2

Art Unit: 2651

1. The IDS has been considered. Bang, Kubota, Tokizono, and Ehrlich are cited as of interest.

- 2. A copy of the relevant portions of the Franklin et al, noted on page 20 of the specification, should be supplied.
- 3. The disclosure is objected to because of the following informalities: on pages 1 and 2, the missing serial numbers must be supplied. Figures 12 and 13 must be described in the brief description of drawings.

Appropriate correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,115,199, hereinafter "Bang". Bang shows servo demodulation method comprising searching for a SAM pattern using first parameters (col. 4, II. 3-22), and searching using a second different set of parameters (col. 4, II. 44-67, et. seq., col. 5, II. 29-35).

Art Unit: 2651

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/620,818. Although the conflicting claims are not identical, they are not patentably distinct from each other because the obvious process of the apparatus is recited.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Faber whose telephone number is (703) 308-4816. The examiner can normally be reached on flextime (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (703) 308-4825. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 10/620,971

Art Unit: 2651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alan Faber

Primary Examiner

Page 4

Art Unit 2651

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